

Ordinance No: 16-28
Zoning Text Amendment No: 08-07
Concerning: Alternative Review Committee
- Functions
Draft No. & Date: 3 – 10/21/08
Introduced: April 29, 2008
Public Hearing: June 17, 2008
Adopted: October 21, 2008
Effective: November 10, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- remove the Alternative Review Committee from the development plan and project plan approval processes;
- allow certain development plans or project plans to exceed density or building height limits to permit the construction of all MPDUs and bonus units on-site; and
- generally amend provisions relating to Development Plans and Project Plans.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

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|-------------------|--|
| DIVISION 59-D-1 | “DEVELOPMENT PLAN” |
| Section 59-D-1.6 | “Approval by district council” |
| Section 59-D-1.61 | “Findings” |
| DIVISION 59-D-2 | “PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT IN CBD, TOMX, AND RMX ZONES” |
| Section 59-D-2.4 | “Action by planning board” |
| Section 59-D-2.42 | “Findings required for approval” |

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

*Underlining indicates text that is added to existing laws
by the original text amendment.*

***[Single boldface brackets]** indicate text that is deleted from
existing law by the original text amendment.*

***Double underlining** indicates text that is added to the text
amendment by amendment.*

***[[Double boldface brackets]]** indicate text that is deleted
from the text amendment by amendment.*

******** indicates existing law unaffected by the text amendment.*

Opinion

Zoning Text Amendment (ZTA) 08-07, sponsored by the District Council at the request of the County Executive, was introduced on April 29, 2008. ZTA 08-07 would remove any mention of the Alternative Review Committee (ARC) from the Zoning Ordinance. Under ZTA 08-07, the Council and the Planning Board could approve development plans and project plans that exceed the density or building height limits recommended in the applicable master plan. They could do so to permit the construction of all Moderately Priced Dwelling Units (MPDUs) and bonus units on-site. Recent master and sector plans recommend densities without MPDUs and with MPDUs. Older master plans have a single number for density. The height recommendations of master and sector plans do not suggest flexibility for MPDUs.

Currently, development plans and project plans may exceed the density or building height limits recommended by the applicable master plan under certain conditions. This authority exists when the ARC finds that providing the MPDUs within the height and density limits would make the project fiscally infeasible. The Hearing Examiner and Montgomery Civic Federation found a problem with the ARC's role in zoning matters. The ARC closed its meetings to the public when it dealt with proprietary financial data provided by the developers; all past ARC meetings dealt with proprietary financial data.

Many applications for floating zones include development plans. The recommendations on zoning applications are made by the Hearing Examiner, based on a hearing process that allows cross examination. Proponents and opponents to a zoning application cannot cross-examine the ARC. Project plans are the subject of public hearings before the Planning Board; the findings of the ARC are not debatable by the Planning Board.

Planning Staff recognized that the ARC's conclusions, made in closed meetings, were not refutable in open sessions. Planning Staff further noted that under ZTA 08-07, the Planning Board still had discretion on the density and height of project plans even though they may be above the sector plan's recommendations. The Board must still make a finding of compatibility to approve a project plan.

The Planning Board disagreed with part of Planning Staff's recommendation. Although it agreed to eliminate ARC for the Zoning Ordinance, the Planning Board did not support retaining code provisions to allow sector plan-recommended density and heights to be exceeded.

The Council held a public hearing on June 17, 2008. Testimony for the Montgomery Civic Association agreed with the Planning Board; the ZTA was characterized as a sector plan amendment in the form of a ZTA. One attorney presented testimony in support of ZTA 08-07 but also in support of more flexibility from sector plan height and density limits in general.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation. After reviewing the material in the record, the Committee recommended approval of ZTA 08-07 amended to reflect recent Council action on ZTA 08-15.

The District Council reviewed Zoning Text Amendment No. 08-07 on October 21, 2007, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No 08-07 will be approved as amended.

Ordinance

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-D-1 is amended as follows:

DIVISION 59-D-1. DEVELOPMENT PLAN.

* * *

59-D-1.6. Approval by district council.

59-D-1.61. Findings.

Before approving an application for classification in any of these zones, the District Council must consider whether the application, including the development plan, fulfills the purposes and requirements in Article 59-C for the zone. In so doing, the District Council must make the following specific findings, in addition to any other findings which may be necessary and appropriate to evaluate the proposed reclassification:

- (a) The [zone applied for] proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. [However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If the Committee finds that the development would not be financially feasible, the Planning Board must

recommend to the District Council which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

- (1) exceeding an applicable height limit, lower than the maximum height in the zone, that was recommended in a master plan or sector plan,
- (2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that was recommended in a master plan or sector plan, or
- (3) locating any required public use space off-site.]

However, to permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a development plan may exceed:

- (1) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but must not ~~[[to]]~~ exceed the maximum density of the zone; and
- (2) any building height limit recommended in a master plan or sector plan, but must not ~~[[to]]~~ exceed the maximum height of the zone.

The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units.

* * *

Sec. 2. DIVISION 59-D-2 is amended as follows:

**DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF
DEVELOPMENT IN CBD, TOMX, AND RMX
ZONES.**

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59-D-2.4. Action by planning board.

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59-D-2.42. Findings required for approval.

Although an application may comply with all of the specific requirements and intent of the applicable zone, it does not create a presumption that the application must be approved. The Planning Board may approve, or approve subject to modifications, an application only if it finds that:

- (a) It would comply with all of the intents and requirements of the zone.
- (b) The application would be consistent with the applicable sector plan or urban renewal plan. [However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a project plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If the Committee finds that the development would not be financially feasible, the Planning Board must decide which if any of the following measures

authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

- (1) exceeding an applicable height limit, lower than the maximum height in the zone, that is recommended in a master plan or sector plan,
- (2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that is recommended in a master plan or sector plan, or
- (3) locating any required public use space off-site.]

However ~~[[, to]]~~:

- (1) To permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a project plan may exceed:

~~[[(1)]]~~ (A) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but must not ~~[[to]]~~ exceed the maximum density of the zone; and

~~[[(2)]]~~ (B) any building height limit recommended in a master plan or sector plan, but must not ~~[[to]]~~ exceed the maximum height of the zone. The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units.

- (2) An optional method of development project need not conform to the applicable sector plan's or urban renewal plan's recommendation to

provide a mid-block pedestrian path on private property if the applicable plan does not recommend the continuation of the mid-block pedestrian path on confronting private property across a road right-of-way, or if the applicable plan recommends that the mid-block pedestrian path cross a major highway.

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Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council